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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,541	10/07/2003	Matthew Levinson	15132US03	4995
23446	7590	03/31/2004		
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER HARDEE, JOHN R				
ART UNIT		PAPER NUMBER		
1751				

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,541

Applicant(s)

LEVINSON, MATTHEW

Examiner

John R. Hardee

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eb

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,12-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,12-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 100703.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3-5, 12-15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE OS 3,818,013. The reference discloses a flexible substrate impregnated with a fabric softening composition for use in a dryer. The substrate may be of paper, non-woven cloth or sponge, with a ratio of softener to substrate of 10:1 to 1:3 by weight (p. 3, lines 9-11). Said composition has a softening point of 30-60 degrees C (abstract). The composition preferably comprises a quaternary ammonium compound bearing two acyloxyalkyl groups of 10-22 carbons (p. 2, line 42 et seq.) These groups may be saturated or unsaturated. The examiner takes the position that hardening (saturation) of unsaturated groups would be obvious to the person of ordinary skill in the surfactant art because natural fatty acid feedstocks generally contain appreciable

amounts of unsaturated material, so the recitation of "saturated or unsaturated" would suggest manipulation of the degree of unsaturation via hardening. These groups may be derived from tallow, oleic, coconut oil or rapeseed fatty acids (p. 2, lines 45-46). The other two groups may be methyl groups or C₂-C₄ alkyl or hydroxyalkyl groups. The counterion is disclosed as generally being chloride or methylsulfate (p. 3, lines 34-35). Glycerol and its fatty acid esters are disclosed as being suitable additives (p. 3, lines 44-46). Example 1 exemplifies the use of 20% of glycerol monostearate and 40% of dimethyldi(oleoylisopropyl)-ammonium methosulfate in a softener-to-substrate ratio of 86:35. However, glycerol monostearate is well known in the surfactant art to be a mixture of mono-, di- and triesters of glycerol and stearic acid. (See Corona, III et al., US 5,503,756, col. 11, lines 30-34). It would have been obvious at the time the invention was made to substitute glycerol for a portion of the glyceryl monostearate, because their disclosure together at p. 3, lines 45-46 suggests their general equivalence. This substitution would result in a mixture of glycerol and all three of its stearate esters, since the method of use claims are directed to ordinary usage of a dryer sheet or sponge and are therefore obvious as well.

4. The examiner is aware that applicant is preparing samples for a showing of unexpected properties. Applicant's efforts at expediting the prosecution of this application are appreciated. This action is NOT FINAL.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone

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number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee
Primary Examiner
March 23, 2004